

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID C. HARDY,

Plaintiff,

v.

Case No. 11-13008
Honorable Patrick J. Duggan

DIANNE MARBLE, RN LYNCH, RN
SULLIVAN, RN PETTY, and RN ORTH,

Defendants.

**OPINION AND ORDER GRANTING DEFENDANTS PETTY'S, LYNCH'S AND
ORTH'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff filed this lawsuit against Defendants claiming violations of his civil rights under 42 U.S.C. § 1983. On September 16, 2011, this Court referred the matter to Magistrate Judge Charles Binder for all pretrial proceedings, including a hearing and determination of all non-dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(A) and/or a report and recommendation on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(B). Defendants Petty, Lynch, and Orth filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56 on September 16, 2011.

On February 3, 2012, Magistrate Judge Binder filed a Report and Recommendation (R&R) recommending that this Court grant the motion for summary judgment. (Doc. 26.) Magistrate Judge Binder concludes that Plaintiff's claim against Defendants Petty, Lynch, and Orth are barred because he failed to exhaust the administrative grievance process with respect to these defendants due to his failure to

comply with the time requirements for filing his Step III appeal set forth in the Michigan Department of Corrections' Policy Directives. (*Id.* at 7-8.) At the conclusion of the R&R, Magistrate Judge Binder advises the parties that they may object to and seek review of the R&R within fourteen days of service upon them. (*Id.* at 8-9.) He further specifically advises the parties that "[f]ailure to file specific objections constitutes a waiver of any further right to appeal." (*Id.*) Neither party filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Binder.

Accordingly,

IT IS ORDERED, that Magistrate Judge Binder's R&R is adopted;

IT IS FURTHER ORDERED, that Defendants Petty's, Lynch's, and Orth's motion for summary judgment is **GRANTED** and Plaintiff's Complaint is **DISMISSED WITH PREJUDICE** as to these Defendants, only.

Date: March 9, 2012

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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AAG Allan J. Soros
Magistrate Judge Charles Binder